IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 4TH JANUARY 2007 / 14TH POUSHA, 1928.

WP(C).No. 33852 of 2006(E)

PETITIONER:

M/S.HILL WOOD INDUSTRIES,
N.H.ROAD, RAMANATTUKARA, KOZHIKODE,
REPRESENTED BY ITS MANAGING PARTNER,
V. SHERIF.

BY ADV. SRI.M.K.DAMODARAN (SR.)

RESPONDENTS:

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1. THE INTELLIGENCE OFFICER (IB)
COMMERCIAL TAXES, KOLLAM.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

GOVT. PLEADER SRI. V.V. ASOKAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20.12.2006, ALONG WITH W.P.(C) 33933/06 AND OTHER CASES, THE COURT ON 4.1.2007, DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

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W.P.C. NOS: 33852, 33933, 34002 & 34018 OF 2006

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3. It is settled law that principles of natural justice is not a straight jacket formula. Whether in a given case ultimately any prejudice has been caused and whether there is any violation of the principles of natural justice itself could be finally said only after referring to the detailed investigation of the facts and the circumstances under which the final orders were passed, unless the violation complained of is apparent on the face of the order. Thus detailed enquiry has necessarily to be conducted by the appellate authority under the statute in case an appeal is filed therefrom. Hence to express any final opinion at this stage may not be proper unless the case involves violation of principles of natural justice on the face of the order or as alleged by the circumstances pointed out in the writ petition.

4. Even though it is urged that no opportunity was given to cross examine the witnesses, the proceedings of the Intelligence Officer and the records would show otherwise. The other grounds urged are in the realm of appreciation of evidence on record. In this connection, it has to be noticed that the file discloses that the Intelligence Officer, Investigation Branch, Kollam issued summons to M/s. P. Moitheen, Proprietor, Al-ameen Wood Industries, Kanjangadu, U.V. Shahid, son of Sri. P. Moideen, N.K. Appootty, M.K. Stores, Faroke, Hill Wood Imports and Exports, Hill Wood Industries, Mangaly Timbers, Mangaly Industries, National Timbers,

Pilathara, and P. Ahammad Kutty & Company to appear before him in person on 17.7.2006 to conduct a personal hearing and for cross examination. Accordingly, Sri. P. Moideen, Al Ameen Wood Industries and his Advocate Sri. V.P. Sukumar and Sri. U.V. Shahid, son of P. Moideen appeared in time. Sri. M.K. Appootty, M.K. Stores, Faroke did not appear, but sought adjournment of the case to another date. The managing partners of M/s. Hill Wood Industries, M/s. Hill Wood Import & Export Private Limited, M/s. Mangaly Timbers, Mangaly Industries, M/s. National Timber Traders, Pilathara, P. Ahammad Kuttyy & Company, Kozhikode also did not appear in person. But Advocate Baby John and P.N.D. Namboothiri, authorized representatives of Hill Wood Group of Companies and V. Ahammad Kutty & Company respectively, appeared. Adv. V. Sivasankaran appeared for Mangaly Timbers and Mangaly Industries. Sri. K.P. Shabeer, authorized representative has appeared for National Timbers, Pilathara. However, they did not produce any books of accounts or any other piece of evidence in support of their claim as to the actual sale of timber to the petitioner dealer.

5. By letter dated 24.7.2006, Advocate Sri. P.N.D. Namboothiri informed the Intelligence Officer, Investigation Branch, that he has not been issued a certified copy of the deposition of Sri. Moideen, Proprietor,

Al-Ameen Wood Industries, Kanhangad and his son U.V. Shahid, conducted on 17.7.2006 and repeated the request for issuance of the same. He also put in a request to summon certain persons mentioned therein to conduct further enquiry and for their cross examination. Likewise, Mangaly Timber & Furniture Works, by a separate letter requested the Intelligence Officer to give them the hearing notes at the earliest. Accordingly, by letter dated 1.8.2006, photo copes of depositions of M/s. U.B. Shahid and Moideen were forwarded to Advocate Sri. PND Namboothiri. By letters of the same date, photo copies of the deposition of the above said persons were also forwarded to Sri. Joe Mangaly, Mangaly Timber & Furniture Works, Patthanam, Kollam and to Advocate Sri. V.P. Sukumar. On 7.8.2006, the request for re-examination of the witnesses at the instance of Advocate Sri. V.P. Sukumar on behalf of Moideen, Al-ameen Wood Industries, was allowed. Likewise, the request of Advocate Sri. PND. Namboodiri to cross examine Sri. Moideen and the request of Advocate Sri. C.B. Sivasankaran for cross examination of the witness were also allowed. On behalf of Hill Woods Group, Kozhikode, the request made by Advocate Sri. Bobby John for cross examination of Sri. Modieen was allowed on the same day. It is further noted that the chief examination of Sri. V. Sherief, Hill Woods Group, was done by Advocate Sri. Bobby

John.

6. There was a request from Sainaba, U.S. Timbers, Muvattupuzha, to cross examine Sri. Moideen and his son Shahid on 7.8.2006. Relevant records including copy of books of accounts of M/s. Al-ameen Wood Industries, Kanhangad for the year 2001-02 was also requested for. It was submitted that due to personal inconvenience, she was not in a position to appear before the Intelligence Officer on 7.8.2006 and her absence may be condoned. Various documents were also marked in the case as M1 to M17. On the request from Advocate Sri. Namboodiri for issuance of certified copy of the depositions and cross examination made by Sri. Sherif, Joe Mangaly, Sri. Appootty and Moideen on 7.8.2006, such certified copies were seen issued, as is seen from the letter dated 28.8.2006. Likewise hearing notes of M/s. Moideen, Sherief, Joe I. Mangali and Appootty were also issued to Manjali Industries. Photostat copies of the depositions and cross examination were also issued to National Timber Traders, by letter dated 5.10.2006. The proceedings would also show that the case was posted for hearing on 27.4.2006. Number of books of accounts were also produced. The case was adjourned to 6.5.2006 for cross examination of Sri. Moideen. Photo copies of Form 18 were also issued to the counsel appearing for the parties. On 10.4.2006, Al-ameen Wood Industries,

Kanhangad appeared but no books of accounts were produced. On 6.5.2006, counsel representing the parties appeared. Case was again adjourned for hearing on 18.5.2006. The presence of parties who appeared on that day were also marked. On 17.7.2006 Sri. Shahid, son of Moideen, Al-ameen Wood Industries appeared and his evidence was recorded. He was also cross examined by the counsel for Mangaly Group as also by the Hill Wood Groups. The case was posted for hearing on 27.4.2006, 6.5.2006, 18.5.2006, 17.7.2006 and 7.8.2006. The petitioner and the witnesses in the case appeared and were cross examined. Thus, the request on behalf of the Hill Wood Groups for summoning Sherief, Moideen and other witnesses was accepted and the case was posted for hearing and cross examination to 6.5.2006. Sri. P. Mehmood, National Timber Traders, Pilalthara was also summoned and his son and authorised representative Sri. K.P. Shabir appeared on 6.5.2006. After the close of chief examination and cross examination, Sri. K.P. Shabir, son of Sri. P. Mehmood, National Timber Traders, Pilathara had stated that he had nothing more to ask and had agreed to file a detailed reply. The case was again posted for hearing on 18.5.2006. Though Sri. P. Mehamood National Timber Traders, Pilathara, Kannoor was summoned, he had not appeared and intimated as per letter dated 17.5.2006 that he could not travel long distance due to health

problems. Again the case was posted for hearing on 17.7.2006 and on that day also he has not appeared. Instead his son Sri. K.P. Shabeer appeared and cross examined Sri. Shahid, son of Sri. P. Moideen. The case was again posted for hearing on 7.8.2006 on which day also, adjournment was sought for by Sri. P. Mehamood. Notice was also issued to the parties including the National Timber Traders, Pilathara. Notice dated 27.9.2006 was issued for 2001-02 and notices dated 28.9.2006 were issued for the year 2002-03 to 2004-05 allowing seven days time to file objection if any in the matter. The dealer was also given opportunity of being heard in the matter in the office on 27.10.2006. The notices were received by the petitioner on 19.10.2006 and on 27.10.2006 and a reply dated 25.10.2006 was received from the petitioner informing that he has to gather certain documents for which a fortnight time is required. The request was allowed. On 8.11.2006, the counsel for the other Hill Wood Groups appeared and filed a request stating that the case was entrusted to him only on 7.11.2006 and requested for one month's time. The Officer, in such circumstances, came to the conclusion that it is only to drag on the proceeding that such request is made.

7. It has to be observed in this connection that Sri. Moideen, Proprietor, Al-ameen Wood Industries had filed W.P.(C) 33646/2005 and a learned Judge of this Court, by order dated 17.2.2006 directed the Registry

to issue photo copy of the report received from the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau, Northern Range, Kozhikode to the petitioner, Government Pleader and counsel appearing for respondents 5 to 10 on usual terms. It was also directed that a copy of the report shall be given to the Commissioner of Commercial Taxes to take appropriate action against those who have made bogus sales and accounted the same at concessional rate in the name of the petitioner therein. It was pursuant to that the case relating to the obtaining of defamating declarations in a fraudulent manner by some of the dealers happened to be enquired into. The gist of the order passed by this Court is contained in the notice issued under Section 45 A of the KGST Act (Ext.P2 in W.P.(C) 33852/2006). The order itself would show that opportunity for cross examination of the witnesses was granted to the petitioners. Petitioners had been given opportunity to submit their reply also and prima facie conclusions were drawn based on the evidence and materials placed on records and after affording such opportunity. In such circumstances, I do not find that the case involves any exceptional circumstances warranting interference at this stage of the proceedings rather the petitioners are relegated to the remedy of filing an appeal before the appellate authority. If appeals are filed within a period of three weeks from today, the same shall

be entertained by the appellate authority. It is also open to the petitioners to apply for any interim relief and the appellate authority will accordingly consider such request and pass orders. Subject to the right of the petitioners as aforesaid, these writ petitions are dismissed in limine.

8. Before parting with the cases I may advert to one of the letters from P. Mehamood, Proprietor, National Timber Traders, Pilathara, Kannur, dated 25.11.2006, wherein he has made a request to cross examine M/s. . Moideen, Shahid, Sukumaran, Prince, Anwar, Apputty as also the Manager of the concerned Bank. The said letter is seen received by the Intelligence Officer only on 4.12.2006, after the impugned order was passed and as such the Intelligence Officer had no occasion to consider the request. Hence it is open to the said dealer to raise such contentions before the appellate authority as at present it cannot be said that the order impugned was without acceding to such request especially since when the request comes only at a belated stage.

9. I make it clear that the dismissal of these writ petitions will not stand in the way of the appellate authority considering the entire matter on merits. The appellate authority will hear and dispose of the matter untrammeled by any observations made as the writ petitions are dismissed at the admission stage without going to the details of the allegations contained

in them as I thought it is not necessary at this stage to do so; but have been disposed of based on a prima facie finding alone. Subject to the above, the writ petitions are dismissed.

P.R. RAMAN,
(JUDGE)

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